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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 167

BANCO CREDITO Y AHORRO PONCENO, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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1. OPINIONS DELIVERED BY THE COURT AND BOARD

This petition for a writ of certiorari seeks review of a decision of the United States Court of Appeals for the First Circuit delivered on March 7, 1968 in *Banco Credito y Ahorro Ponceno* v. *NLRB,* F.2d (1st Cir. No. 7001) (not yet officially reported) (JRA 377). This decision enforced an order of the National Labor Relations Board (herein referred to as the Board) rendered on September 12, 1967 in *Banco Credito y Ahorro Ponceno,* 167 NLRB No. 52 (JRA

329). This Board decision, in turn, rested on appropriate unit findings made by the Board on September 30, 1966 in *Banco Credito y Ahorro Ponceno,* 160 NLRB No. 119 (JRA 275). The Court decision and two Board decisions are reprinted as appendices "A", "B" and "C" respectively to this petition.

2. JURISDICTION

The jurisdiction of this Court is conferred by 28 U.S.C. § 1254(1).

3. QUESTIONS PRESENTED

This petition for certiorari presents the following two inter-related questions:

1. Whether the National Labor Relations Board, in conflict with the Court's decision in *NLRB* v. *Metropolitan Life Insurance Co.,* 380 U.S. 438, failed to articulate substantial reasons for its precedent-setting decision, on the one hand that a single branch of a highly centralized multiple branch bank in Puerto Rico is appropriate for bargaining, and on the other hand that a thirteen branch unit of the same bank is also appropriate for bargaining where the only common element in the two inconsistent units is the extent of union organization.

2. Whether the Board acted in contravention of Section 9(c)(5) of the Statute, which forbids extent-of-organization units, when the Board found both a single branch unit and a thirteen branch unit appropriate for a highly centralized banking operation in Puerto Rico with thirty-one branches in circumstances where:

(1) all of the factors normally considered by the Board in unit cases—centralization and integration,

central control of labor policy, community of employee interest, interchange, geographical contiguity and lack of local autonomy—favored an overall unit; and

(2) the units found appropriate coincided with the extent of organization and the unit requests of the unions seeking representation rights in such units.

4. IMPORTANCE OF QUESTIONS PRESENTED

This is one of only two reported cases since Taft-Hartley in which the Board has had occasion to consider appropriate bargaining units in the banking industry. Union organization came late in this industry, but now appears to be accelerating in tempo so that it may be expected that this case will have general significance throughout the nation as a precedent-establishing decision shaping the pattern of employee representation in this important industry.

Banking is, to a significant degree, the life blood of trade and commerce, and its importance to the economic health of the nation and the preservation of a healthy, viable economy can hardly be overstated. Because of its nature, banking has unique characteristics of organization and operation which distinguish it sharply from other industries such as manufacturing, retailing, transportation, and even insurance. For this reason, patterns of bargaining in other industries afford little precedent to guide the establishment of bargaining units. It is important to the continued efficiency of the banking systems of the nation that bargaining relationships and employer-employee relations be established on a basis that is compatible with the unique characteristics of the industry and will foster stability of labor relations as well as efficiency of service to the public.

Banks are, by the nature of their services and the necessity for careful controls of banking practices, more highly centralized and controlled than manufacturing or other businesses. The record in this case, largely ignored or passed over by the Board and Court, affords a typical picture of the nature of banking operations and the high degree of centralization and integration of a banking operation. Branches are established in various locations to serve the convenience of the public. But every activity of the branches is closely controlled from the central departments. This centralization of control relates not merely to banking services but also to personnel and to the determination and administration of labor relations programs and policies.

There is a much higher degree of centralization and integration in banking operations than exists in chain stores or even in public utility systems. Yet, the Board has long recognized that the most appropriate unit in public utility systems is a system-wide unit.

The Board's recent reversal of long standing precedent in unit determinations in the insurance industry and its penchant for fragmenting units in that industry, has led to confusion, controversy and instability of labor relations. The Court showed its concern for these trends in the *Metropolitan* case, *supra,* when it remanded the case for further consideration and articulation of unit rationale and standards. The present case, and the action of the Board in finding appropriate fragmented and inconsistent units, presages a similar approach to the banking industry, and the same unstabilizing consequences may reasonably be predicted.

It is recognized that the Board has broad discretion to determine bargaining units, but as the Court emphasized in *Metropolitan,* this discretion has definite and definitive limits. It was the predisposition of the Board to fragmentize employer administrative organization to satisfy a natural union preference for extent of organization units which led the Congress to enact Section 9(c)(5) of the Act in 1947, and caused the Court to remand the *Metropolitan* case.

Despite the clear warning signal given it by that decision, the Board now moves to grant what are essentially extent of organization units in the banking industry. In a pre-Taft-Hartley case arising in Puerto Rico, *Banco Popular de Puerto Rico,* 61 NLRB 676 (1945), the Board, not then restricted by Section 9(c)(5), found a single branch appropriate, as it has done here, although conceding the highly centralized and integrated nature of the system. The single branch unit was admittedly based on extent of union organization, and the Board stated:

> "This finding does not preclude a later determination in favor of a larger unit in the event of an extension of organization to include employees in all the island" (p. 679).

Despite the supervening enactment of Section 9(c)(5) the Board has here followed, *sub silentio,* the *Banco Popular* precedent and established three extent of organization units. Apart from extent of organization, there is no other common thread or rational basis for granting the request of the unions to establish in the same proceeding two single branch units and a thirteen branch unit. No one of these units conformed to any of the three administrative territories of the bank, or

has any other distinguishing characteristic to mark it as appropriate for bargaining. The Board in granting the unions' request for these fragmented units ignored its own standard criteria and failed to develop criteria tailored to the unique character of the banking industry. Stripped of meaningless verbiage, the Board has beyond question granted extent of organization units in contravention of Section 9(c)(5).

The Court of Appeals, rather surprisingly, has chosen not to question the Board's contravention of the Statute. The precedent-setting character of these unit findings in a critical industry justifies review by the Court.

5. STATUTE INVOLVED

The statute involved is Section 9 of the National Labor Relations Act, 29 U.S.C. § 159, which is set out in full in Appendix D to this petition. Of particular relevance in this proceeding is subsection (c)(5) of Section 9 which provides:

> "In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling."

6. STATEMENT OF THE CASE

The Petitioner is a bank with its home office, centralized departments and thirty-one branch offices in Puerto Rico.[1] On March 9, 1966 the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, District Lodge 3,

[1] The only office outside of Puerto Rico is a bond office in New York City.

AFL-CIO (herein referred to as the Boilermakers) filed a representation petition under Section 9 of the Act with the Board to represent employees in a thirteen branch unit of bank offices located in what the Board referred to as "the San Juan metropolitan area." This grouping did not coincide with any administrative area or subdivision of the bank. On April 14, 1966 another organization, called Union de Empleados de Oficinas de Bancos y Financieras, Afiliada à Office and Professional Employees International Union, AFL-CIO (herein referred to as UEOB), filed two representation petitions with the Board, one seeking to represent employees at the Yauco branch and another seeking to represent employees at the Arecibo branch. Boilermakers intervened in the UEOB single branch petitions. A different labor organization, the Office and Professional Employees International Union, AFL-CIO (herein called Office Employees) intervened in the Boilermakers'[2] petition involving the thirteen branches of the bank. The cases involving all three petitions were consolidated for Board decision.

In a prior proceeding in 1962, a different labor organization filed a representation petition and executed a consent agreement with the bank to hold an election in a unit consisting of all operations of the Bank in Puerto Rico (JRA 9,276). This agreement had the approval of the Board's Regional Director.

The Board and Court made the following findings of fact concerning Petitioner's operations:

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[2] The Office Employees at first took the same position on the scope of the unit as the Employer—that only an all-branch unit of the Bank was appropriate (JRA 7). Later this union took the position that either an island-wide or a thirteen branch unit was appropriate (JRA 86).

1. "The Employer's policies pertaining to operations, administration and labor relations for all of its branch offices are formulated centrally by top management" (JRA 276-277).

2. "The Bank's Board of Directors and Operations Committee determine policy including labor relations policy. Services are administered from centralized departments most of which are in San Juan." (JRA 378).

3. "The Employer's Finance, Personnel, and Publicity Departments are *housed* in its main office in San Juan; general record keeping, electronic data processing, and the consumer loans department are located in the centralized Stop 17 office; and the Comptroller's Office, including Accounting and Reports, Bookkeeping, Purchases and Disbursements, is presently located in Ponce, a distance of approximately 70 miles from San Juan" (JRA 277).

4. "Services are administered from centralized departments, most of which are in San Juan." (JRA 378).

5. "Centralized supervision is accomplished by the administrative subdivision of the island into three territories, with area supervisors reporting through the General Supervisor of branch offices to the Assistant Executive Vice-President." (JRA 277).

6. "Such centralization is required in order to ascertain the Bank's daily cash position inasmuch as the loan capacity of each branch office is affected by the Bank's overall margin requirements." (JRA 277).

7. "Employees are under a bank-wide classification system with uniform salaries, hours, and fringe benefits" (JRA 378).

Geographically, the Commonwealth of Puerto Rico is approximately thirty-five miles wide and one hundred miles long (JRA 202). The nearest branch office to the Arecibo branch office involved in this case is sixteen miles, and the central office in San Juan is less than forty miles from the Arecibo branch—an hour's drive (JRA 379).

The Board and Court found that there were 206[3] transfers of employees among the 31 branches in a period of the last 28 months prior to the hearing (JRA 278, 379). Two of these involved transfers from the Arecibo branch to other branches (JRA 213-223).

The nature of the banking industry lends itself in a unique manner to the high degree of centralization and integration of operations. Thus, for example, the lending capacity of the bank depends on its overall cash position, which changes on a day-to-day basis (JRA 132-133). Only by an unusually high degree of centralization can the proper controls be established for determining the overall cash position of the bank at any given time (JRA 277).

While reciting these and other facts pointing to an overall unit, the Board purported to find justification for single branch units (as well as a 13 branch unit) in the admittedly routine and limited authority of the local branch manager to recommend hiring, firing, and disciplinary measures, resolving minor grievances, authorizing overtime and scheduling vacations, all restricted to action within the limits of central policy. The Board also found as a makeweight, and based on no record evidence, that while distances in Puerto Rico

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[3] 208 is the correct number.

are not great, "inadequate roads" render many offices remote from one another.

Based on these findings, and the finding that "no labor organization is seeking the Employer's overall operations," the Board found two single branches and one thirteen branch grouping to constitute appropriate units.

The Court accepted the Board's findings.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

1.

The Finding of the Board That a Single Branch of a Thirty-One Branch Bank Located in Puerto Rico Is an Appropriate Unit for Bargaining Conflicts With the Decision of This Court in NLRB v. Metropolitan Life Ins. Co., 380 U.S. 438, in That (1) It Fails To Articulate Reasons Why Such Unit Is Appropriate in View of the Admitted High Degree of Centralization, Integration of the Bank's Operations and Administration, the Bank-Wide Uniformity of Wages, Hours, and Other Conditions of Employment and the Lack of Local Branch Autonomy, and (2) It Fails To Articulate Reasons Why, in the Same Case, the Board Inconsistently Found Appropriate a Thirteen Branch Unit of the Same Bank in Puerto Rico Over the Objection of the Bank That the Only Appropriate Unit Consisted of All Employees of All Branches of the Bank

This Court in *NLRB* v. *Metropolitan Life Ins. Co.*, 380 U.S. 438 (1965), reviewed the Board's appropriate unit policy in the insurance industry. There the record showed that in recent cases the Board had found various different types of units appropriate in that

industry.[4] The case itself dealt with a Board finding that a single district office in the State of Rhode Island, which had eight district offices, was appropriate. The Court found that:

> "[D]ue to the Board's lack of articulated reasons for the decisions in and distinctions among these cases, the Board's action here cannot properly be reviewed. When the Board so exercises the discretion given to it by Congress, it must disclose the basis of the order and 'give clear indication that it has exercised the discretion with which Congress has empowered it' " 380 U.S. at 442-43.

The present case is one of the first reported representation cases involving the scope of the appropriate unit for bargaining in the banking industry since the passage of the Taft-Hartley Act.[5] Instead, however, of providing the guidance that was required in this relatively newly organized industry, the decision presages an irrational pattern of gerry-mandered union representation in this industry, based primarily on the extent to which the union has organized the employees of the bank.

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[4] In one case the Board had certified as appropriate a unit consisting of two of the company's three district offices in a state; in another the unit was all district offices within a city limits; in another case the unit was all district offices within a metropolitan area including suburbs; in another case the unit certified was a single district office together with two detached suboffices 284 and 120 miles distant from the district office.

[5] In Central Valley Nat. Bank, 154 NLRB 995 (1965), the only other reported representation case dealing directly with the banking industry subsequent to 1947, the Board found appropriate a unit limited to a bank's supply department. The issue of a branch, multi-branch or bank-wide unit of the bank was not involved.

Here, in the same decision, the Board has found appropriate for bargaining two single branches of the bank and a thirteen branch unit of the same bank. No reasons are articulated for finding a single branch appropriate or why in the same case, involving the same bank, on the same geographically compact island of Puerto Rico, a thirteen branch unit is also found appropriate.

As shown in the statement of the case, *supra,* the admitted and undisputed facts in the record indicate clearly, under Board and Court precedent, that only an all-branch unit of the bank's employees is appropriate. These facts include:

1. Central organization and administration of the bank as a whole by the Board of Directors and Executive Committee and by a system of administrative subdivision of the bank into three areas, with area supervisors reporting through the general supervisor of branch offices to the Assistant Executive Vice-President.

2. Centralized origin and administration of policies concerning operations and labor relations.

3. Centralized finance, personnel, publicity, comptroller, accounting and reports, bookkeeping, procurement and disbursements departments of the bank. Centralized record keeping, data processing and FHA, construction and consumer loans departments.

4. Uniform bank-wide job classification system.

5. Uniform system of salaries, hours, and fringe benefits.

6. Transfers between the branches totalling 208 over a 28 month period.

7. Unit restricted to the relatively small and compact geographical area of Puerto Rico.

8. Lack of substantial autonomous authority of the branch managers and the substantial restrictions on their discretion in employee relations by reasons of the highly centralized origin and administration of labor relations policy.

While case comparisons are notoriously difficult to make in representation cases, and there are no Board or Court cases subsequent to 1947 dealing with this type of representation problem in the banking industry, the Courts have, in the past refused to enforce Board orders requiring bargaining in fragmented units in the face of a similar showing of centralization and integration of overall operations within a relatively small area. See, e.g., *NLRB* v. *Purity Food Stores,* 354 F. 2d 926 (1st Cir. 1965) (reversing a finding that a single supermarket of a seven-market chain in an area north of Boston was an appropriate unit on the ground that "it would be difficult to find a more integrated operation or less difference among employees"); *NLRB* v. *Purity Food Stores, Inc.,* 376 F. 2d 497 (1st Cir. 1967) (again setting aside a Board order entered upon remand of the previous *Purity* case finding that the single store was an appropriate unit on the basis that "the 'independence' of the stores in the Purity chain amounts to no more than a few miles of physical separation and the consequent division of a few ministerial responsibilities. This is far from enough."); *NLRB* v. *Frisch's Big Boy Ill-Mar, Inc.,* 356 F. 2d 895 (7th Cir. 1966) (settng aside Board order requiring bargaining in one restaurant of a ten-restaurant chain in the Indianapolis, Indiana area on the basis that the restaurants "are as much alike in this respect [labor

relations] as peas in a pod" and that "the decisions left to the [individual] restaurant managers do not involve any significant element of judgment as to employment relations".)

The Board's attempted rationalization for its fragmentation of the Arecibo branch of the bank as an appropriate unit is a collection of non sequiturs and trivia. After first reciting the evidence summarized immediately above demonstrating conclusively that the sole appropriate unit was an employer-wide one, the Board, with Court approval, relied on the following in finding the Arecibo branch an appropriate unit:

1. *Supervision of employees on a day-to-day basis by the branch managers.* It is nothing more than a truism that if there are thirty-one branch offices, there must be someone with supervisory authority in each branch. The real question, which the Board and Court do not answer, is the amount of authority reposed in and exercised by the branch manager and the extent to which his authority is circumscribed by centrally devised and administered policies, particularly labor relations policies. In purely conclusionary terms the Board characterized the branch manager's authority as "substantial." But this conclusion is at odds with the facts the Board and Court recite concerning the unusually high degree of centralization and integration of operations and administration of this bank. The branch managers' recommendations with respect to firing and discipline of branch employees are limited to mere recommendation. There was evidence, as found by the Court, that the branch managers' recommendations in respect to firing and discipline were not always followed. The Court apparently believed that actual rejection of branch managers' recommendations three

or four times a year was too infrequent to demonstrate the circumscribed nature of the branch managers' authority. The opposite inference, however, is the correct one. The bank hires branch managers to carry out its admittedly centrally devised and administered policies. It would demonstrate the bank's lack of central control and authority over labor and personnel policies, as well as its lack of judgment in choosing branch managers, if there were a higher incidence of rejections of branch managers' recommendations on these minor disciplinary matters.

The significant consideration, however, is that policy-making authority over labor relations and personnel matters is centralized and the branch managers have no authority in this area. The responsibility to make recommendations on hiring, firing and discipline is a routine management function normally delegated to intermediate or low level supervision.

The authority of the branch managers in authorizing overtime, scheduling of vacations within limitations of central policy, explanation of company policies in answer to specific employee questions and resolving "minor employee grievances" are also routine matters that a functionary can perform with no real policy-making authority *vis à vis* the branch employees. These matters could as well be handled by a payroll clerk. As the Court said in the *Frisch* case, *supra:*

> "It is obvious to us that none of the store managers will be deciding questions affecting the employees in the context of collective bargaining."

2. *Difference among the individual branches.* The Board purported to find a single Arecibo branch unit appropriate because of "marked differences among the

individual branch offices . . ." (JRA 277). The only "marked" difference noted, however, was an alleged observance of "local holy days" (JRA 278). The only evidence on which this was based was a belief by a single witness that these were one or two towns where the bank might reduce its staff to a skeleton crew in observance of a patron saint's day (JRA 197-198). This slender reed was too much for the Court, which pointedly did not rest its decision on this purported factor. Such reliance is ludicrous when the undisputed record shows a complete uniformity in rates of pay, employee benefits, hours and all other terms and conditions of employment.

3. *Alleged minimal transfers of employees from branch to branch.* The record disclosed that there were 208 transfers from one branch to another during the period from January 1, 1964 to the date of the hearing in April of 1966. It is difficult to understand how such a record can be characterized as "minimal" (JRA 278). This is particularly true of the banking industry where there is a high degree of employment stability. While not adopting the Board's theory that the record showed that there was a "minimal" incidence of transfers, the Court found significance in the fact that only two of the transfers involved the Arecibo branch. Since, however, there are 31 branches, the average transfer rate per branch was only 6.64 per branch. The difference is obviously *de minimis* and wholly unworthy of a basis on which an appropriate unit finding can validly rest.

4. *The alleged remoteness of one branch from another.* The Board found that "inadequate roads render many such offices remote from one another" (JRA

278). There is not a shred of evidence in the record to support this conclusion. It is all the more surprising in view of the obvious geographical fact that can be obtained by looking at any ordinary map, that the island is only some 35 by 100 miles in total area and that it is connected by a highly efficient network of highways. The Court endorsed the Board's conclusion of remoteness, and noted "the Arecibo branch is almost forty miles from San Juan and is reached by automobile in one to one and a quarter hours." The same, of course, is true of the automobile ride from Washington, D. C. to Annapolis, Maryland, or practically any other two urban points forty miles between each other in the continental United States. That significance is sought to be attached to such trivial matters discloses the thinness of the argument.

The error of the Board's designation of the Arecibo unit as the appropriate unit for bargaining is highlighted by the internally inconsistent ruling in the same case that a thirteen branch unit of the same bank is also an appropriate unit for bargaining.[6] As in the *Metropolitan Life Ins. Co.* case, *supra,* no reasons were articulated by the Board or the Court for this inconsistent determination of appropriate units for the bank's employees in other parts of Puerto Rico. The sole rationalization used by the Board in an attempt to distinguish the two situations is that the thirteen branch units sought by the union was within what the Board called "the metropolitan area" of San Juan and that such branches:

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[6] While the appropriateness of the thirteen branch unit was not involved in the appeal, the inconsistent unit finding is a relevant consideration.

> "constitute a clearly defined, geographically coherent grouping sufficiently inclusive and compact to make collective bargaining in a single unit feasible." (JRA 278)

Geographical coherence is a meaningless abstraction. Any area which has bounds or limits is "geographically coherent". The term "sufficiently inclusive and compact" is a relative term at best. When applied to a portion of an already compact and wholly inclusive area that comprises Puerto Rico as a whole, the term has little or no meaning. The Court additionally believed that it was relevant for purposes of showing why, in the same case, a single branch and a thirteen branch unit could be found as the appropriate units of this bank's operations the fact that approximately 57% of the employee transfers between January 1, 1964 and May of 1966 were between branch offices within the thirteen branch unit sought by the unions. The significance of this fact is almost wholly muted by the fact that the thirteen branches sought as a unit in the unions' petition constitute 42% of the bank's thirty-one branches and that approximately 60% of the bank's total employees are employed at the thirteen branches in question.

Thus, as was true in the *Metropolitan* case, there is in this case a "lack of articulated reasons for the decisions in and distinctions among these cases;" or, more pertinently, a lack of articulated reasons for the decision to make the Arecibo branch a separate appropriate unit and to distinguish the inconsistent ruling in the same case that a thirteen branch unit of the same bank was appropriate.

2.

The Controlling Weight Given to the Unions' Extent of Organization by the Board, in Determining the Appropriateness of the Unit, Constitutes a Decision of an Important Question of Federal Law, Which Has Not Been, But Should Be Settled By This Court

Section 9(c)(5) of the Act constitutes an express Congressional limitation on the Board's powers in making appropriate unit findings in representation cases. It provides:

> "In determining whether a unit is appropriate for the purposes specified in subsecton (b) the extent to which the employees have organized shall not be controlling."

This section of the Act was added in 1947. The legislative history clearly shows its origin and purpose:

> "Section 9(f)(3) [subsequently enacted as 9(c)(5)] strikes at a practice of the Board by which it has set up as units appropriate for bargaining whatever group or groups the petitioning union has organized at the time. Sometimes, but not always, the Board pretends to find reasons other than the extent to which the employees have organized as grounds for holding such units to be appropriate. (Matter of *New England Spun Silk Co.* 11 NLRB 852 (1939); Matter of *Botany Worsted Mills,* 27 NLRB 687 (1940). While the Board may take into consideration the extent to which employees have organized, this evidence should have little weight, and, as section 9(f)(3) provides, is not to be controlling" H. Rept. No. 245 on H.R. 3020, 80th Cong. 2nd Sess. 1947, p. 37.

In this case the units found appropriate by the Board conform precisely to the units as petitioned for by the unions, which naturally, is the indicator of the extent

to which the unions had organized the employees in question. As shown in the argument under the first reason for granting the writ, the Board articulated no valid reasons for determining as appropriate the single branch of the Bank of Arecibo and no reason distinguishing the contradictory ruling in the same case that a thirteen branch unit of the same bank was also appropriate. Also, as shown above, the Board's attempted rationalizations for the results it reached are so devoid of merit that they cannot be termed "articulated reasons."

This case, therefore, presents to the Court the important question of federal law, which the Court found it unnecessary to reach in the *Metropolitan* case. In that case the Court of Appeals had found that the Board violated Section 9(c)(5) of the Act by its finding that a single branch office of the Company was the appropriate unit, whereas in six other recent cases, all involving the same employer, the Board had found other types of units appropriate (see footnote 4, *supra*), and in every case the unit found appropriate was the unit the union had petitioned for. The Court of Appeals had concluded that the Board had given controlling weight to extent of organization in violation of Section 9(c)(5) of the Act. *NLRB* v. *Metropolitan Life Ins. Co.*, 327 F. 2d 906 (1st Cir. 1964). The issue this Court deemed sufficiently important as a matter of federal law to warrant the exercise of its certiorari power to review was the issue of whether the Board's action had violated Section 9(c)(5). Since it refused to enforce the Board's order on the middle ground that the Board had failed to articulate reasons for its decision, the Court found it unnecessary to reach the question or issue on which certiorari was granted. That

issue is squarely presented by the circumstances of this case.

Here the make-weight and trivial rationalizations put forward by the Board and Court in support of the decision that the Arecibo branch should constitute a separate appropriate unit of this highly and necessarily centralized and integrated banking operation presents the perfect record for demonstration that there is no factor, other than the unions' wishes and their extent of organization, that could possibly lead to the gerrymandered result that prevailed in this case.

This is all the more unfortunate since it is the Board's first attempt to deal with basic scope-of-appropriate-unit representation problems in the banking industry since the Taft-Hartley Act was passed in 1947. It presages a period of labor relations instability in this industry similar to the instability in the insurance industry that ultimately led this Court to take the *Metropolitan* case. The organization of a single bank, with its demonstrated need for centralization and integration, with its uniform wages, hours, and other terms and conditions of employment, and within the close geographical boundaries of Puerto Rico on a piecemeal basis can only serve to disrupt the operations of the bank and keep the question of representation throughout the bank's branches in a perpetual state of uncertainty and confusion, and subject to periodic raiding by outside labor organizations. Under the Board and Court ruling, the unit lines in such organizational disputes would be constantly shifting, depending on the desires of the unions involved and the extent of their organization. The spectre of a dozen or more different labor organizations each representing various branches or groupings of branches of the bank in Puerto Rico,

each seeking its own different bargaining program and different collective bargaining agreements from an employer bank that peculiarly requires centralization and standardization in all aspects of the employment relationship in order to maintain efficient and accurate service to the public cannot be lightly dismissed. It is squarely at odds with the overall policy of the Act to "eliminate the causes of certain substantial obstructions to the free flow of commerce . . . by encouraging the practice and procedure of collective bargaining." Such a fragmentation of the representation of the Bank's employees in these circumstances makes effective collective bargaining unfeasible, if not impossible.

As the legislators who wrote Section 9(c)(5) into the Act realized, the Board has rarely, if ever, admitted that it has given controlling weight to the extent of the unions' organization of employees. As stated in the House Report quoted above, the Board on occasion "pretends to find reasons other than the extent to which the employees have organized as ground for holding such units to be appropriate." And this Court warned in the *Metropolitan Life Ins. Co.* case "that the enforcing court should not overlook or ignore an evasion of the § 9(c)(5) command" 380 U.S. at 442.

Surely the present case presents a dramatic "evasion" of Section 9(c)(5) through its "pretense" of finding "reasons" other than extent of organization as a ground for holding the unit in question to be appropriate for bargaining.

CONCLUSION

For the above stated reasons Petitioner respectfully requests that this Court grant the petition for certiorari to review the decision of the United States Court of Appeals for the First Circuit in the instant case.

Respectfully submitted,

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